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7 Attorneys for Plaintiffs BLAZE, INC. and
JACQUELINE LOPEZ-FLORES

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11

12 BLAZE, INC., a California corporation; and
13 JACQUELINE LOPEZ-FLORES, an
individual,

14 Plaintiffs,

15 v.

16 VF MALL, LLC, a Delaware limited liability
17 company; DOES 1-10, inclusive,

18 Defendants.
19

Case No. 1-15-CV-280113

FIRST AMENDED COMPLAINT FOR
BREACH OF CONTRACT;
INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE; FRAUD AND
DECEIT—SUPPRESSION OF FACT,
INTENTIONAL MISREPRESENTATION,
NEGLIGENT MISREPRESENTATION;
UNFAIR BUSINESS PRACTICES
(B.&P.C. §17200); AND DAMAGES

Complaint Filed: May 1, 2015

20
21 Come now, Plaintiffs BLAZE, INC. and JACQUELINE LOPEZ-FLORES, and allege
22 against Defendants as follows:

23 GENERAL ALLEGATIONS

24 1. At all times herein mentioned, Plaintiff BLAZE, INC. was and is a California
25 corporation duly authorized to do business in California and actually doing business in the
26 County of Santa Clara, California.

27 2. At all times herein mentioned, Plaintiff JACQUELINE LOPEZ-FLORES was
28 and is a resident of the County of Santa Clara, California.

-1-

FIRST AMENDED COMPLAINT

VALLEY FAIR

EXHIBIT

A

1 3. At all times herein mentioned, Plaintiff JACQUELINE LOPEZ-FLORES was
2 and is the president of BLAZE, INC. and the personal guarantor of the obligations of
3 BLAZE, INC. pursuant to the Lease referred to in this Complaint.

4 4. At all times herein mentioned, Defendant VF MALL is a Delaware limited
5 liability company doing business in the County of Santa Clara, California.

6 5. The true names of Defendants DOES 1-10, inclusive, are unknown to
7 Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are
8 informed and believe and thereon allege that each of the Doe defendants is liable to
9 Plaintiffs in some manner under the Lease, or otherwise. Plaintiffs will ask leave of the
10 Court to allege their true names and capacities when the same have been ascertained.
11 Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned,
12 each of the Doe defendants sued herein was the agent or employee of each of the
13 remaining Defendants and was at all times acting within the purpose and scope of such
14 agency and employment.

15 6. On or about September 30, 2010, Plaintiff BLAZE, INC., as Tenant, and
16 Defendant VF MALL, LLC ("VF MALL") as Landlord, entered into a written Lease for the
17 commercial premises at Valley Fair described as Westfield Valley Fair, 2855 Stevens
18 Creek Boulevard, Store No. A123, Santa Clara, California (the "Premises"), and as more
19 particularly described in the Lease. Plaintiff BLAZE, INC. and Defendant VF MALL
20 subsequently agreed to three written Amendments to the Lease. A true and correct copy
21 of the Lease, as amended, is attached hereto as Exhibit "A" and incorporated herein by
22 reference.

23 7. As a condition of entering into said Lease, Defendant VF MALL required that
24 plaintiff JACQUELINE LOPEZ-FLORES personally guarantee, in writing, the obligations of
25 BLAZE, INC. under said Lease, including the full, faithful and timely payment and
26 performance by BLAZE, INC. of all the payments, covenants and other obligations of
27 BLAZE, INC. under or pursuant to the Lease. In her capacity as president of BLAZE, INC.
28 and as an individual, Plaintiff JACQUELINE LOPEZ-FLORES signed written Guaranties of

1 the Lease on or about September 24, 2010 and April 25, 2012. As a Guarantor, Plaintiff
2 JACQUELINE LOPEZ-FLORES is exposed to personal liability to Defendant VF MALL
3 should Plaintiff BLAZE, INC. breach or fail to perform under said Lease. True and correct
4 copies of the Guaranties executed by JACQUELINE-FLORES are part of Exhibit A.

5 8. The form Lease and its Amendments were prepared by attorneys or other
6 representatives of Defendant VF MALL and Plaintiffs were required, as a condition of
7 leasing the Premises, to sign the form Lease and Guaranties submitted to them by
8 Defendant VF MALL. Plaintiffs are informed and believe and thereon allege that VF MALL
9 uses the same basic lease forms for dozens of other tenants at the Westfair Valley Fair
10 Mall including, but not limited to, clothing and apparel stores, without regard to the tenant's
11 particular type of business or its required tenant improvements. The form Lease is
12 inappropriate for use with a tenant who operates a restaurant or a restaurant/lounge with
13 extended operating hours. As a consequence, VF MALL has misinterpreted key terms of
14 the Lease in order to "fit" its desires, including misinterpreting the occurrence of the Term,
15 Commencement Date, Rental Commencement Date, and Expiration Date of Term.

16 9. The original intent of Plaintiffs and VF MALL was that Plaintiffs were to
17 demolish the existing abandoned restaurant in Store No. A123 and construct an upscale
18 restaurant and lounge with extended hours to be operated by BLAZE, INC. Defendants
19 were well aware that it would take many, many months for Plaintiffs to complete the build
20 out and creation of the restaurant including the patio area. VF MALL agreed that the
21 commencement of rent would not start until certain benchmarks were reached, as defined
22 in the Lease. The terms and conditions of the Lease required VF MALL to approve all
23 designs and plans for the restaurant including, but not limited to, its menu and signage.

24 10. During the initial design phase of the restaurant, it was agreed between
25 Plaintiffs and VF MALL that BLAZE, INC. would construct and open a lounge as a dual
26 business operation at the Premises. VF MALL was primarily represented by its leasing
27 manager—Kurt Utterback ("Utterback")—in these discussions. Plaintiffs and VF MALL
28 through Utterback and the General Manager mutually believed and agreed that having a

1 restaurant and lounge would enhance the value of Plaintiffs' businesses, increase
2 Plaintiffs' revenue, increase the rent to be paid to VF MALL pursuant to the Lease, and
3 enhance the character of Valley Fair Mall to compete with the Santana Row Mall across
4 Stevens Creek Boulevard. As a result of the agreement to construct and open a lounge,
5 the Lease had to be amended to accommodate construction and operation of Plaintiffs'
6 restaurant and lounge businesses. On or about November 22, 2010, Plaintiffs and VF
7 MALL entered into written Lease Amendment No. 1, which provided for a change in
8 operating times of Plaintiffs' businesses to accommodate the lounge hours from 2:00 a.m.
9 to 3:00 a.m. On or about April 25, 2012, Plaintiffs and VF MALL entered into written Lease
10 Amendment No. 2 to accommodate a new trade name for the restaurant, menu changes,
11 and required signage. Lease Amendment No. 2 was necessary to allow Plaintiffs to apply
12 for a conditional use permit, which was necessary for the operation of the lounge portion of
13 Plaintiffs' business since the lounge will offer entertainment. On or about August 15, 2012,
14 Plaintiffs and VF MALL executed into written Lease Amendment No. 3 to make changes to
15 the manner in which VF MALL would pay to Plaintiffs a \$350,000 Tenant Improvement
16 Allowance. This Allowance was vital to the timely completion of the design and
17 construction of Plaintiffs' restaurant and lounge, and Plaintiffs absolutely required the
18 infusion of this vital capital.

19 11. As a result of the decision to construct and operate a lounge in the three
20 Amendments to the Lease, Plaintiffs and VF MALL were well-aware that the design,
21 approval, and construction phases of the Project would be considerably lengthened by
22 months or even years. Plaintiffs and Utterback and VF MALL were aware that several
23 governmental permits would have to be obtained by Plaintiffs in order to complete the
24 Tenant's Work as defined by the Lease. These governmental permits include the
25 following: (a) planning permit; (b) building permit; (c) environmental health permit; (d)
26 environmental water and pollution permit; (e) signage permit; (f) conditional use permit; (g)
27 entertainment permit; and (h) liquor license. Plaintiffs and VF MALL knew that it would be
28 a difficult, complicated, and very time-consuming process to obtain approval of a

1 conditional use permit ("CUP") from the San Jose Planning Department. Plaintiffs
2 obtained the services of a land use consultant to assist in obtaining the CUP in 2011 and
3 paid the required governmental fees. VF MALL, the Landlord, had to sign all CUP
4 applications. The first CUP application was rejected in or about June, 2011 and Plaintiffs
5 had to re-apply for the CUP. The CUP was approved on or about March 24, 2014 by the
6 San Jose Planning Commission. Until final approval for the CUP was granted, Plaintiffs
7 could not complete their business plan, introduce the lounge, and apply for the required
8 entertainment permit.

9 12. After Plaintiffs took possession of the Premises on or about October 1, 2010,
10 they were not required to pay any rent as per the terms and conditions of the Lease. The
11 Lease specifically contemplates a lengthy period of time where no rent is owed by
12 Plaintiffs during the time that they were planning, designing, and constructing their
13 restaurant and lounge. Section 1.02 of the Lease specifically addresses the Rental
14 Commencement Date. It is clearly provided for and contemplated by the Lease that
15 Plaintiffs would have no contractual obligation to pay any rent to Defendant VF MALL until
16 either the Tenant opens the Premises for business to the public or 90 days from the
17 issuance to Tenant of all governmental permits necessary for Tenant to complete Tenant's
18 Work and subject to VF MALL's review and approval of all of Tenant's plans.

19 13. Plaintiffs have applied for all governmental permits required to complete
20 Tenant's Work. The governmental permits have been approved at various times during
21 the construction of the restaurant and lounge. As required by the Lease, Plaintiffs
22 submitted their plans and revised plans to VF MALL for review and approval. VF MALL
23 provided its final approval of Plaintiffs' designs, plans and specifications for the restaurant
24 and lounge on or about October 23, 2014. Plaintiffs were in the final stages of completing
25 Tenant's Work as required by the Lease. Plaintiffs could not obtain approval of their
26 application for an entertainment permit due to several conditions which must have been
27 met before the San Jose Police Department would approve the entertainment permit.

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1 Plaintiffs anticipated the entertainment permit would be approved in May, 2015 after which
2 Plaintiffs would open for business to the public their restaurant and lounge.

3 14. On October 10, 2011, a company named Group One Construction, Inc.
4 recorded a claim of Mechanic's Lien in the amount of \$215,011 against the Premises.
5 Group One Construction, Inc., through its president, falsely claimed that it was a contractor
6 which provided labor, materials or services to improve the Premises on behalf of Plaintiffs.
7 At the time, Saul Flores was a vice president of Group One Construction, Inc., its
8 Responsible Managing Officer, and its construction license holder. Saul Flores is a board
9 member and officer of BLAZE, INC. and is also in charge of construction of the restaurant
10 and lounge. Saul Flores believed that the Group One Mechanic's Lien, filed without Saul
11 Flores' knowledge or consent, was bogus, invalid, and should never have been recorded
12 at the instance of Group One's president. In October, 2011, Saul Flores caused a valid
13 Release of Group One's Mechanic's Lien to be recorded with the Santa Clara County
14 Recorder. VF MALL was served with a copy of the Group One Mechanic's Lien and made
15 demands upon Plaintiffs that they defend and indemnify VF MALL as to said Mechanic's
16 Lien. Plaintiffs and Saul Flores provided a copy of the Mechanic's Lien Release to VF
17 MALL and its counsel to show that the Mechanic's Lien was no longer on the Premises.
18 VF MALL and its counsel refused to accept the validity of the Release, even though it was
19 properly executed and recorded and they knew or should have known that Group One
20 Construction's Mechanic's Lien was bogus. VF MALL demanded that Plaintiffs retain
21 counsel at Plaintiffs' expense to obtain counsel to represent VF MALL as a defendant in
22 Group One's lien foreclosure lawsuit, which was filed in the Santa Clara County Superior
23 Court on or about January 6, 2012. Even though the Mechanic's Lien had been released,
24 Plaintiffs agreed to defend and indemnify VF MALL as to the Group One lawsuit at great
25 expense to Plaintiffs. As a purported result of the Mechanic's Lien, which had been validly
26 released, VF MALL refused to pay Plaintiffs the first \$175,000 installment of the Tenant
27 Allowance as required by the Lease. The failure to timely pay the \$175,000 installment
28 caused great injury and harm to Plaintiffs because it substantially delayed their completion

1 of the restaurant and lounge. Plaintiffs made numerous demands upon VF MALL that it
2 pay the Allowance. Finally, in or about September, 2013, Plaintiffs were able to raise
3 sufficient funds to essentially "bond around" the amended Mechanic's Lien, causing a
4 second Release thereof to be recorded by Group One Construction, Inc. VF MALL
5 accepted the second Release, which was redundant, and eventually paid the first
6 installment of the Allowance to Plaintiffs, minus substantial deductions. As a result of VF
7 MALL's refusal to honor the Release of the lien and its refusal to pay the first installment of
8 the Allowance, Plaintiffs were compelled to inform potential investors that title was
9 clouded. This disclosure dissuaded potential and existing investors and Plaintiffs had to
10 self-capitalize the business and self-perform the Tenant's Work to a great extent.

11 15. During the pendency of Group One Construction, Inc.'s lien foreclosure
12 lawsuit and well before the opening of Plaintiffs' business, and well before Plaintiffs
13 obtained approval of all required governmental permits that were necessary to complete
14 Tenant's Work as defined by the Lease, VF MALL falsely and in direct violation of the
15 Lease demanded that Plaintiffs commence paying rent. Plaintiffs are informed and believe
16 that VF MALL took the position that a building permit was supposedly the one and only
17 "governmental permit" required by the Lease and that, according to VF MALL, the Rental
18 Commencement Date occurred 90 days after the building permit was approved on
19 December 8, 2011. Under no circumstances had the Rental Commencement Date, as
20 defined by the Lease, occurred because the building permit was only one of many
21 governmental permits required to complete construction and opening of the restaurant and
22 lounge. As a result of VF MALL's false and improper demand to pay rent, Plaintiffs
23 commenced to pay rent in or about March, 2012 under protest and in order to prevent VF
24 MALL from bringing eviction proceedings against Plaintiffs or to otherwise interfere with or
25 delay their construction of the restaurant and lounge. Plaintiffs have paid more than
26 \$700,000 of rent to VF MALL. In addition, Plaintiffs tendered three months of rent to VF
27 MALL, but VF MALL has refused to accept the rent tendered by Plaintiffs.

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1 16. On February 3, 2015, VF MALL filed a Complaint for Unlawful Detainer in the
2 above-entitled Court against BLAZE, INC.; Case No. 115CV276409 ("Unlawful Detainer
3 Action"). In its Complaint for Unlawful Detainer, VF MALL alleged that BLAZE, INC. failed
4 to pay it Rent and Additional Rent allegedly owed under the Lease. VF MALL falsely and
5 without basis alleged that the Rental Commencement Date as defined by the Lease is
6 March 7, 2012. VF MALL falsely claimed that Plaintiffs owe rent of more than \$200,000.
7 VF MALL sought to forfeit Plaintiffs' rights under the Lease and to evict Plaintiffs from the
8 Premises, notwithstanding Plaintiffs' investment in the Premises of approximately \$6
9 million and Plaintiffs taking every step necessary to complete construction of the
10 restaurant and lounge and open for business.

11 17. Plaintiffs contend that the Rental Commencement Date has not occurred yet
12 because BLAZE, INC.'s entertainment permit has not been approved yet by the San Jose
13 Police Department and an entertainment permit is a "governmental permit" that is required
14 for Plaintiffs to complete Tenant's Work in order to open for business. Plaintiffs allege that
15 the absolute earliest Rental Commencement Date, defined by the Lease, is January 30,
16 2015, which is 90 days after VF MALL approved Plaintiffs' plans as per Section 1.02 of the
17 Lease. The rent which Plaintiffs have paid to VF MALL far exceeds any rent which
18 actually is owed to VF MALL under the terms and conditions of the Lease. Accordingly,
19 VF MALL's Complaint for Unlawful Detainer was without merit and unlawfully and unfairly
20 interfered with Plaintiffs' ability to open for business and protect their investment in the
21 Premises.

22 18. Notwithstanding the clear facts showing that the Rental Commencement
23 Date did not occur in 2012 and that, at the earliest, it occurred in 2015, VF MALL and its
24 counsel persisted in prosecuting their Unlawful Detainer Action, persisted in refusing
25 Plaintiffs' tenders of rent, and sought to evict Plaintiffs from the Premises.

26 19. VF MALL's Motion for Summary Judgment on the unlawful detainer matter
27 was denied by the Honorable Carol Overton on August 6, 2015. A true and correct copy
28 of the Order Re: Motion for Summary Judgment or, in the Alternative, Summary

1 Adjudication is attached hereto as Exhibit "B" and incorporated herein by reference. Only
2 then did VF MALL announce it was invoking Section 6.04(b) of the Lease regarding the
3 lessor's expansion of the Shopping Center. This Lease provision requires VF MALL to
4 pay for the unamortized value of the Plaintiff's improvements which VF MALL has refused
5 to do. VF MALL failed to comply with Section 6.04(a), a precondition to invoking Section
6 6.04(b) termination.

7 20. Unknown by and undisclosed to Plaintiffs, in 2006, VF MALL completed an
8 Environmental Impact Report ("EIR") to support a site development permit allowing for a
9 650,000 square foot expansion of the Valley Fair Mall. The proposed expansion calls for
10 adding 213,180 square feet to each floor of the mall on the south side. The expansion
11 encompassed BLAZE, INC.'s site and precluded the use of the patio since the second
12 floor was being expanded southward over it. The proposed new configuration eliminated
13 any exterior access for BLAZE, INC. rendering the site unusable as a nightclub or
14 restaurant open beyond the mall's operating hours.

15 21. Plaintiffs are informed and believe that between 2006 and the time BLAZE,
16 INC. signed its Lease, VF MALL was negotiating with tenants (existing and potential) to
17 accomplish the Shopping Center expansion.

18 22. On October 1, 2012, VF MALL contracted with David J. Powers and
19 Associates to do a Phase 1 Environmental Site Assessment for the expansion project.
20 VF MALL's decision to hire Powers and Associates was preceded by internal discussions
21 regarding the project.

22 23. In May of 2013 VF MALL applied for an amendment to its 2007 site
23 development permit to extend the permits for an additional three years.

24 24. On June 10, 2013, VF MALL filed for an amendment to its permit to
25 demolish and construct a 6 story parking structure.

26 25. VF MALL never advised Plaintiffs of its expansion plans. VF MALL never
27 advised Plaintiffs to stop its permit processing and construction which was being
28 undertaken simultaneous to VF MALL's pursuit of its expansion plans.

1 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

2 **FIRST CAUSE OF ACTION**

3 **(Breach of Contract)**

4 26. Plaintiffs reallege and incorporate by reference paragraphs 1 through 25 set
5 forth above.

6 27. Plaintiffs allege that Defendants, and each of them, have breached the
7 Lease contract in the following ways: (a) claimed a false or incorrect Rental
8 Commencement Date; (b) required the premature payment of rent allegedly owed under
9 the Lease with the threat of eviction; (c) collected and continued to collect rent from
10 Plaintiffs not validly owed under the Lease; (d) claimed that Additional Rent and other
11 charges are owed under the Lease when they are in fact not; (e) served Plaintiffs with
12 numerous false and improper notices to cure to or quit; unreasonably delayed in giving
13 approvals of Plaintiffs' designs and plans; (g) impeding the progress of the construction of
14 the restaurant and lounge; (h) failing and refusing to honor the October, 2011 Release of
15 Group One Construction's Mechanic's Lien; (i) delaying the payment of the Tenant
16 Allowance owed under the Lease and then taking unreasonable or unlawful deductions
17 therefrom; (j) requiring Plaintiffs to defend and indemnify VF MALL for the Group One
18 Construction lawsuit, even though none was owed under the facts and circumstances or
19 terms and conditions of the Lease; (k) threatening eviction of Plaintiffs from the Premises;
20 (l) filing and prosecuting the bogus and improper Unlawful Detainer Action in this Court;
21 (m) violated the covenant of good faith and fair dealing; (n) failed to pay for Plaintiffs'
22 improvements as required by Section 6.04(b) of the Lease; (o) violated Plaintiffs' right to
23 quiet use and enjoyment of the Premises; and (p) other acts or omissions.

24 28. Plaintiffs have performed all obligations owed by them under the Lease
25 except for those obligations whose performance has been prevented or made impossible.

26 29. In reliance on the promises and agreements of VF MALL as set forth in the
27 Lease, Plaintiffs incurred expenses in anticipation of performance of the Lease by
28

1 VF MALL. Plaintiffs entered into contracts with various professionals to manage different
2 aspects of the design and operation of its restaurant and lounge.

3 30. As a direct and proximate result of Defendants' breach of contract, Plaintiffs
4 have sustained and continued to sustain very substantial economic damages in an amount
5 that cannot be ascertained at this time. Plaintiffs will amend their Complaint to assert the
6 exact amount of their claimed damages at or prior to trial, but it is not less than this Court's
7 jurisdictional minimum.

8 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

9 **SECOND CAUSE OF ACTION**

10 **(Interference With Prospective Economic Advantage)**

11 31. Plaintiffs reallege and incorporate by reference paragraphs 1 through 30 set
12 forth above.

13 32. The principals and officers of BLAZE, INC., have a proven track record of
14 successfully operating restaurants and lounges in Santa Clara County. BLAZE, INC., has
15 established relationships with other companies in the restaurant and lounge industry.
16 Plaintiffs have designed and are constructing a top quality, upscale restaurant and lounge
17 that will attract numerous customers at a popular mall in a booming local economy.
18 Plaintiffs justifiably anticipate and will make very substantial profits when they open their
19 restaurant and lounge for business.

20 33. The conduct of Defendants, particularly VF MALL, as described above, was
21 designed to and/or has wrongfully disrupted and substantially delayed the opening of
22 Plaintiffs' restaurant and lounge and has also caused Plaintiffs to incur very substantial
23 additional costs that they would not have incurred absent the conduct and interference of
24 Defendants, and each of them.

25 34. As a proximate result of Defendants' conduct, Plaintiffs have suffered
26 significant economic damages in an amount to be proven at trial. Plaintiffs will seek leave
27 to amend their Complaint to insert the exact dollar amount of their damages.

28 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

1 **THIRD CAUSE OF ACTION**

2 **(Fraud and Deceit—Suppression of Fact)**

3 35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34 set
4 forth above.

5 36. VF MALL has been actively pursuing the expansion of the Shopping Center
6 that would eliminate Plaintiffs' leasehold or a major portion thereof since 2006. VF MALL
7 processed permit amendments, hired consultants, performed site assessments and
8 negotiated leases and relocation agreements for new and existing tenants. VF MALL
9 knew at the time of leasing that Plaintiffs would not be able to remain in the Premises for
10 the term of the Lease.

11 37. VF MALL never advised Plaintiffs of its intentions regarding expansion. Kurt
12 Utterback of VF MALL induced Plaintiffs to enter into a 10 year Lease with guarantees.
13 Utterback and his successors continued to allow Plaintiffs to expend substantial funds on
14 tenant improvements, fixtures, professional services and other expenses related to
15 constructing and operating Plaintiffs' business on the Premises.

16 38. The suppression of the fact that VF MALL intended to expand the Shopping
17 Center induced Plaintiffs to lease, guarantee, and to expend substantial monies in
18 furtherance of Plaintiffs' business.

19 39. Plaintiffs, until summer of 2015, were ignorant of the facts suppressed and
20 not disclosed by VF MALL. If Plaintiffs had been aware of the facts not disclosed by VF
21 MALL, Plaintiffs would neither have leased nor continued to expend funds in reliance on
22 the existing tenancy. Plaintiffs would not have entered into contracts with various entities
23 and individuals to provide services for its future operation.

24 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

25 **FOURTH CAUSE OF ACTION**

26 **(Fraud and Deceit—Intentional Misrepresentation)**

27 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through 39 set
28 forth above.

41. VF MALL had ongoing conversations with Plaintiffs and VF MALL continued to misrepresent that Plaintiffs' project was desired by and important to VF MALL. Utterback, General Managers Gavin Farnam, Julie Payne, Adam Kamlet, Matt Ehrie and Operations Managers Jeffrey Helms and Orlando Burch all continued to represent that BLAZE, INC.'s project as desired and that BLAZE, INC. should continue to move forward with its construction and business development efforts. Throughout 2014 Matt Ehrie of VF MALL required Plaintiffs to submit designs, plans and menus for review and approval even though VF MALL had decided to go forward with the Shopping Center expansion. The original approvals of these items had been accomplished in two months yet the second time it took VF MALL 12 months to grant its approval. Throughout the redesign process, VF MALL's design staff (Javier Malespin and Anne Vahcic) encouraged BLAZE, INC. to continue to expend funds and submit design changes in furtherance of BLAZE, INC.'s tenancy. As late as January, 2015, VF MALL through its counsel Jordan Lavinsky, indicated that a two-year extension of the Lease term would be offered after opening.

42. The representations made by VF MALL and its agents were false and made with the intent to deceive Plaintiffs and to induce Plaintiffs to continue paying rent and to reduce the amount of unamortized payments that VF MALL would ultimately have to pay under Section 6.04(b) of the Lease.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Fraud and Deceit—Negligent Misrepresentation)

43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 set forth above.

44. When VF MALL and its employees and agents continued to represent that Plaintiffs' leasehold would be honored and Plaintiffs would be able to open the Premises, they had no reasonable ground for believing these representations to be true in that VF MALL had made a decision to expand the Shopping Center and had full knowledge that Plaintiffs' use of the Premises was foreclosed by the expansion.

45. VF MALL made these representations with the intention of inducing the Plaintiffs to act in reliance on the representations and continue to pay rent and decreasing the unamortized portion of improvements. Plaintiffs did so rely, to its detriment by expending funds and entering into contracts with service providers.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

SIXTH CAUSE OF ACTION

(Unfair Business Practice--Business & Professions Code Section 17200)

46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 45 set forth above.

47. VF MALL has engaged in unfair business practices by failing to inform lessees of impacted units of VF MALL's expansion plans. VF MALL's representation that spaces were available for lease for up to 10 years without disclosing the fact that its planned expansion would preclude a 10 year tenancy misled the tenants.

Withholding the material information regarding its expansion was intended to mislead potential tenants and induce tenants to enter into leases that would not otherwise have been entered into.

48. VF Mall intentionally withheld this information from potential tenants on southside of its building so that it could collect additional rent while it finalized its plans and sought regulatory approvals. This scheme is an unfair business practice.

49. Members of the public are likely to be deceived by VF MALL's scheme and Plaintiffs were actually deceived into leasing and suffered damages from pursuing a business in the leased Premises. Had VF MALL disclosed its intentions, Plaintiffs would not have leased the Premises.

Wherefore, Plaintiffs pray for judgment as follows:

1. For compensatory damages according to proof including but not less than \$11,619,995.00 as BLAZE, INC. continues to accrue damages;

2. For exemplary damages based on Defendant's fraud in the inducement of the Lease and ongoing fraudulent conduct.

1 3. For determination of the value of improvements due pursuant to Section
2 6.04(b) of the Lease;


3 4. For attorney fees according to proof in accordance with Section 27.22 of the
4 Lease;

5 5. For costs of suit herein;

6 6. For such other and further relief as the Court deems just and proper.

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8 MATTEONI, O'LAUGHLIN & HECHTMAN

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10 Dated: 6/6/2014

11 By: 
12 GERALD HOULIHAN
13 Attorneys for Plaintiffs BLAZE, Inc. and
14 Jacqueline Lopez-Flores

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